(19,046.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 103.

SWIFT AND COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Præcipe for record	3	1
Placita	4	2
Petition	7	3
Subpœna and return	23	11
Order of May 20, 1902, for temporary injunction	27	14
Injunction writ, together with marshal's return thereon	30	16
Appearance for defendants	37	20
Demurrer of Swift & Company *et al*	39	21
Demurrer of Nelson Morris *et al*	42	23
Order of December 16, 1902, taking demurrers under advisement	44	25
Opinion	46	26
Order of April 4, 1903, overruling demurrers, &c	48	33
Order of April 22, 1903, entering default of defendants	52	35
Order of May 26, 1903, suggesting death of G. F. Swift	54	36
Decree of May 26, 1903	55	36
Petition for appeal	59	39
Assignment of errors	62	41
Order of July 18, 1903, allowing appeal	81	50
Appeal bond	84	51
Clerk's certificate	90	55
Citation and service	91	55

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 8, 1904.

1 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York, Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of the State of New York. } 26291.

2 Mr. S. H. Bethea, United States attorney, northern district of Illinois,
Mr. Philander C. Knox, Attorney General of the United States,
Mr. John K. Richards, solicitor general of the United States,
Mr. W. A. Day, special assistant attorney general for the United States of America,
Mr. John S. Miller for the defendants.

3 *Pracipe for Transcript.*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY ET AL. } No. 26291.

To the clerk of the above entitled court:

You will please prepare transcript of the record in this cause to be filed in the office of the clerk of the Supreme Court of the United States, at Washington, District of Columbia, under the appeal here-

tofore perfected to said court and include in the said transcript the following pleadings, proceedings, and papers on file, to-wit:

Petition filed May 10, 1902.
Subpœna and marshal's return thereon endorsed,
Order of May 20, 1902,
Injunction writ together with marshal's return thereon endorsed,
Appearance of defendants, filed July 3, 1902.
Demurrer of Swift & Company, *et al.*, filed August 4, 1902.
Demurrer of Nelson Morris, *et al.*, filed Aug. 4, 1902,
Order of December 16, 1902,
Opinion filed Feb. 18, 1903,
Orders of April 4 & 22, 1903,
Order of May 26, 1903.
Decree of May 26, 1903.
Petition for appeal & assignment of errors filed July 18, 1903,
Order of July 18, 1903, allowing appeal,
Bond on appeal, filed July 18, 1903.

Said transcript to be prepared as required by law and the rules of this court and the rules of the Supreme Court of the United States and on file in the office of the clerk of the said Supreme Court at Washington, before August 17, 1903.

JOHN S. MILLER,
MERRITT STARR,
Solicitors for Appellants.

(Endorsed:) Filed August 12, 1903, Marshall E. Sampsell, clerk.

4 Pleas in the circuit court of the United States for the northern district of Illinois—northern division, in chancery sitting at the United States court room, in the city of Chicago, in said district and division, before the Honorable Peter S. Grosscup, circuit judge of the United States for the seventh judicial circuit, on Tuesday, the twenty-sixth day of May, in the year of our Lord one thousand nine hundred and three, being one of the days of the regular December term of said court, 1902, and of our Independence the one hundred and twenty-seventh year.

MARSHALL E. SAMPSELL, *Clerk.*

5 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York, Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Copartners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of the State of New York. } 26291.

6 Be it remembered that on this day to-wit: the tenth day of May, 1902, came the United States of America by Mr. S. H. Bethea, United States attorney, Mr. Philander C. Knox, Attorney General of the United States, Mr. John K. Richards, solicitor general of the United States and Mr. W. A. Day, special assistant attorney general and filed in the clerk's office of said court in the above entitled cause a certain petition in the words and figures following to-wit:

7 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
v.
SWIFT AND COMPANY and Others.

Petition.

To the honorable the judges of the circuit court of the United States of America for the northern district of Illinois, northern division, sitting in equity:

Your petitioner, The United States of America, by S. H. Bethea, its attorney for the northern district of Illinois, acting by and under

the direction of Philander C. Knox, its Attorney-General, brings this, its bill of complaint, against Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, and Armour and Company, corporations organized and existing under and by virtue of the laws of the State of Illinois; the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company corporations organized and existing under and by virtue, respectively, of the laws of the States of New Jersey, Michigan, and New York; Nelson Morris, Edward Morris, and Ira N. Mor-
8 ris, copartners under the name of Nelson Morris and Company, doing business at Chicago, Illinois, East St. Louis, Illinois, and South St. Joseph, Missouri, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, and Henry Veeder, citizens, respectively, of the State of Illinois, residing at Chicago, Edward C. Swift, a citizen of the State of Massachusetts, residing at Boston, and Ferdinand Sulzberger and W. H. Noyes, citizens of the State of New York, residing at the city of New York in that State, and on information and belief, alleges and respectfully shows to your honors:

First. That said corporations, partnership, and persons for many years last past have been and now are engaged in the business of buying live stock, to wit, cattle, sheep, and hogs, at divers points throughout the said United States where stock yards and such like open and competitive markets for the sale of live stock exist—at Chicago, in the State of Illinois; Omaha, in the State of Nebraska; Sioux City, in the State of Iowa; St. Joseph, in the State of Missouri; Kansas City, in the State of Missouri; East St. Louis, in the State of Illinois, and St. Paul, in the State of Minnesota—and slaughtering such live stock at the several extensive plants for that
9 purpose maintained by certain of the said defendants, respectively, to wit, the plants of Armour and Company, at the city of Chicago in the State of Illinois; at the city of East St. Louis, in the State of Illinois; at the city of Kansas City, in the State of Missouri; at the city of South Omaha, in the State of Nebraska, and at the city of Sioux City, in the State of Iowa, the plants of the Cudahy Packing Company at South Omaha, Kansas City, and Sioux City, aforesaid, and at Cudahy, in the State of Wisconsin; the plants of the Hammond Packing Company at Chicago and Omaha, aforesaid, Hammond, in the State of Indiana, and South St. Joseph, in the State of Missouri; the plants of Nelson Morris and Company at Chicago, East St. Louis, and South St. Joseph, aforesaid; the plants of the Schwartzchild and Sulzberger Company at Chicago and Kansas City, aforesaid, and the plants of Swift and Company at Chicago, East St. Louis, South St. Joseph, Kansas City, and South Omaha, aforesaid, and St. Paul, in the State

of Minnesota, and at the said several plants converting the said live stock into fresh meat for human consumption.

Second. That the said defendants for many years last past have been and now are also engaged in the business of selling such fresh meats, at the several places where they are so prepared, to dealers and consumers in divers States and Territories of the said United States other than those wherein the said meats are so prepared and sold as aforesaid, and in the District of Columbia, and in foreign countries, and shipping the same meats, when so sold from
10 the said places of their preparation, over the several lines of transportation of the several railroad companies serving as common carriers, to such dealers and consumers, pursuant to such sales; and in so doing have been and are engaged in trade and commerce among the several States and Territories of the United States and the District of Columbia, and with foreign nations.

Third. That the said defendants for many years last past have been and now are also engaged in the business of shipping such fresh meats from the said several points where the same are so prepared for consumption, over the several lines of transportation of the several railroad companies serving the same as common carriers, to their respective agents located at and near the principal markets for such meats in other States and Territories than those wherein the said fresh meats are so prepared for consumption as aforesaid, and in the District of Columbia, and in foreign countries, for sale by those agents in those markets and in such other States and Territories and the District of Columbia, and in foreign countries, to dealers and consumers; and have been and are through those agents selling the same in those markets, and in so doing have been and are engaged in trade and commerce among the several States and Territories of the United States and the District of Columbia, and with foreign nations.

Fourth. That of the total volume of trade and commerce among the said States and Territories and District of Columbia in fresh meats the said defendants together control about sixty per
11 cent., having during the year 1901 purchased and slaughtered as aforesaid, and sold and shipped in the form of fresh meats as aforesaid, four million cattle, five million sheep, and six million hogs.

Fifth. That as to such trade and commerce among the several States and Territories and District of Columbia and with foreign nations in fresh meats the said defendants should, and but for the acts hereinafter complained of would, be and remain in free and unrestrained competition with each other.

Sixth. That the said defendants, in violation of the provisions of an act of Congress, approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and in order to restrain competition among themselves (which would otherwise exist) as to the purchase of live stock necessary to the production of the meats produced by them, have engaged in and

intend to continue an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents at the said several stock yards and open and competitive markets where they customarily purchase such live stock, to wit, Kansas City and St. Joseph, Missouri; Omaha, Nebraska; Sioux City, Iowa; St. Paul, Minnesota; East St. Louis and Chicago, Illinois, aforesaid (the same being live stock produced and owned principally in other States and Territories of the United States, and shipped by the owners thereof to such stock yards and open markets
12 for competitive sale to *persons and* corporations engaged in producing and dealing in fresh meats in the manner aforesaid) to refrain from bidding against each other, except perfunctorily and without good faith when making purchases of such live stock on behalf of the said defendants respectively, and by this means inducing and compelling such owners of such live stock to part with the same at such stock yards and open markets at prices less than they would there receive if such bidding were really competitive as between the said purchasing agents of the said defendants; and the said defendants have caused and are causing their agents respectively to refrain from bidding accordingly, and have induced and are inducing each other and will, unless restrained by this honorable court, continue in pursuance of such conspiracy, to induce each other to refrain from bidding as aforesaid, which aforesaid combination and conspiracy is one in restraint of trade and commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

Seventh. That the said defendants, in further violation of the provisions of the said act of Congress approved July 2, 1890, and in order to further restrain competition among themselves, which would otherwise exist, as to the purchase of live stock necessary to the production of the meats produced by them, and to obtain for themselves and each other undue advantage over the owners and shippers thereof in the buying of the same at the said several stock yards and
13 open markets, have engaged in and intend to continue an unlawful combination and conspiracy among themselves for bidding up, through their respective purchasing agents, the prices of live stock for a few days at a time at the said stock yards and open markets, so that the market reports will show prices much higher than the state of the trade will warrant, and thereby inducing owners of such live stock in divers other of the said States and Territories to simultaneously make large shipments of such live stock from such other States and Territories to such stock yards and open markets, instead of shipping the same to more natural and advantageous markets and at more natural and advantageous times in the due and proper course of such trade and business, and by this means and by reason of the resulting large offerings there of such live stock (and by thereupon refraining from bidding against each other for the same), obtaining such live stock at prices much less than it would bring in the regular way of trade if such combination and conspir-

acy were not so engaged in and continued; and have been and are now from time to time through their said agents so fraudulently bidding up the prices of such stock, and will, unless restrained by this honorable court, continue to do so; which said combination and conspiracy last aforesaid is also one in restraint of trade and commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

Eighth. That the said defendants, in violation of the provisions of the act of Congress of the said United States, approved July 2,
14 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and in order to restrain and destroy competition among themselves as to such trade and commerce, and monopolize such trade and commerce, have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily from time to time raise, lower, and fix prices, and to maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats to dealers and consumers throughout the said States and Territories and the District of Columbia and foreign countries; and that the arbitrary raising, lowering, fixing, and maintaining of such prices, in pursuance of the said combination and conspiracy, is being and is to be effected through the action of divers of their agents and attorneys to your petitioner unknown, in secretly holding periodical meetings at some place or places to your petitioner unknown, and there agreeing upon the prices to be adopted by the said defendants, respectively, in such trade and commerce, to be enforced by them until at a subsequent meeting the same may be changed; which said prices are notified by letters and telegrams in plain language and divers codes and ciphers; and they have been and are maintained by said defendants by adhering to the same in their sales made directly, and, among other ways, by collusively restricting and curtailing the quantities of such meats shipped by them in such trade and commerce to the markets aforesaid, whenever necessary or conducive to the maintaining of the prices so
15 fixed; by imposing against each other divers penalties for any and all deviations by the said defendants or any of them from the prices so fixed; by establishing a uniform rule for the giving of credits to dealers throughout the said States and Territories and District of Columbia and foreign countries, and for the conduct of the business of such dealers, with penalties as between the said defendants for violations thereof; by notifying each other of the delinquencies of the said dealers, and keeping what is commonly known as a "black list" of such delinquents, and refusing to sell such meats to any of such delinquents; which said combination and conspiracy above set forth is one in restraint and monopoly of commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

Ninth. And the said defendants, in violation of the provisions of the said act of Congress approved July 2, 1890, have engaged in and intend to continue an unlawful combination and conspiracy to direct

and require their respective agents at and near many of the markets for such fresh meats throughout the said several States and Territories and the District of Columbia to arbitrarily make and impose uniform charges for cartage for the delivery, upon making sales to dealers and consumers in those markets, of the meats shipped to them through the said agents by the said defendants, respectively, from their said several points of preparation of the same, when no such charges have been or are customary in such trade and
16 commerce, or would be made but for said combination and conspiracy, thereby increasing the charges for such meats to said dealers and consumers in such markets and preventing the purchase of the same by those who are unable or unwilling to pay more than the price of the meats themselves without such additional charge; which said combination is also in restraint of such trade and commerce aforesaid.

Tenth. That notwithstanding the common carriers by railroad subject to the provisions of the laws of the United States for the regulation of commerce have established and published, and do now and will establish and publish, respectively, their schedules of rates, fares, and charges for the transportation of live stock to the places of its conversion into such meats as aforesaid, and for the transportation of such meats as aforesaid, and notwithstanding such rates were, and are, and will be the only lawful rates for the transportation as aforesaid of such articles, the said defendants, intending thereby to monopolize and attempt to monopolize the commerce aforesaid and prevent competition therein, have all and each engaged in and will continue arrangements and agreements with divers officers and agents of such common carriers, whereby said defendants were to receive and have received and will continue to receive, by means of rebates and other devices, unlawful rates for such transportation, much less than the said lawful rates, and were to exclusively enjoy and share said unlawful advantage to the exclusion of competitors
17 and would-be competitors and the general public, and have accordingly so enjoyed and shared them, and will, unless restrained by this honorable court, continue to do so; and by force of the consequent inability of competitors and would-be competitors to engage or continue in such commerce without ruinous loss have monopolized and are monopolizing and will continue to monopolize the said commerce, and have attempted and are attempting and will attempt to monopolize such commerce in live stock and fresh meats among the States and Territories and the District of Columbia and with foreign countries; which scheme to monopolize is also a combination and conspiracy in restraint of trade and commerce among the States and Territories and the District of Columbia and with foreign countries.

Eleventh. That the said defendants now are and for years past have been in combination and conspiracy with each other and with the railroad companies and others to complainant unknown, to obtain a monopoly of the supply and distribution of fresh meats

throughout the United States and its Territories and shipments thereof to foreign countries.

To that end the defendants do and will artificially restrain such commerce and put in force abnormal, unreasonable, and arbitrary regulations for the conduct of their own and each other's business, affecting the same from the shipment of the live stock from the plains to the final distribution of the meats to the consumer, all to the manifest injury of the people of the United States and in defiance of law.

18 Wherefore, may it please your honors to forthwith grant a writ of injunction directed to the said defendants, their agents, attorneys, and all other persons acting, or claiming or assuming to act, under their authority, or that of any of them, enjoining them and each of them, and each of their agents, attorneys, and the other persons aforesaid, from continuing each and any of the unlawful proceedings aforesaid, and from attempting to monopolize, in the manner aforesaid or in any other manner, and by any other means and devices, the commerce aforesaid, or any part thereof, or any part of the trade or commerce among the States and Territories, and District of Columbia, and with foreign nations, and especially from refraining and instructing their respective purchasing agents to refrain from bidding against each other except perfunctorily and without good faith in making purchases of live stock, and from inducing each other to so refrain, and from engaging in any combination or conspiracy, understanding or arrangement, for the purpose of bringing about such refraining from competitive bidding, and from bidding up the prices of live stock at the stock yards and open markets higher than the state of the trade will warrant, and from arbitrarily raising, lowering, fixing, and maintaining prices of their and each other's products, and from maintaining prices so fixed and uniform prices by adhering to the same in their sales, or by restricting the quantities of meats shipped, or by imposing penalties upon themselves and each other, or by making uniform rules for credits to dealers, or

19 by making and keeping what is commonly known as a "black list" of delinquent dealers, or by refusing to sell meats to such delinquents, or by any other method or device; and from agreeing with each other and acting in concert, with a view to fixing prices or terms for the sale or delivery of said meat products so sold, in such manner as to prevent free competition in, and restrain or monopolize, such commerce; and from imposing a charge for cartage for the delivery of their products upon making sales to dealers and consumers; and from asking and receiving, by means of rebates or otherwise, from railroad companies, less than the established and published rates for the transportation of their live stock and meat products, until such time as your honors shall appoint and direct for a final hearing herein, and upon such final hearing to make such injunction perpetual—

And your orator further prays discovery of the books, papers,

accounts, letters, telegrams, records, and documents whatsoever of the defendants relating in any manner, directly or indirectly, to the purchase or shipment of live stock by them or their agents, or to the sale or shipment or delivery of fresh meats by them or their agents;

And may it please your honors to grant such other and further relief as equity may require, and to your honors may seem meet;

And your orator prays that a writ of subpœna may issue to the said defendants, Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Com-
20 pany, Schwartzchild and Sulzberger Company, corporations and Nelson Morris, Edward Morris and Ira N. Morris, copartners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes, and each of them, requiring them and each of them, under a penalty and at a time and place to be therein stated, to appear and answer under oath all and singular the matters hereinbefore stated and charged, and abide by and perform such orders as the court may make in the premises.

And your orator will ever pray.

S. H. BETHEA,
United States Attorney, Northern District of Illinois.

PHILANDER C. KNOX,
Attorney-General of the United States.
JOHN K. RICHARDS,
Solicitor-General of the United States.
W. A. DAY,
Special Assistant Attorney-General.

PHILANDER C. KNOX,
Att'y General of the United States.
JOHN K. RICHARDS,
Solicitor General of U. S.
W. A. DAY,
Special Assistant Attorney General.

21 STATE OF ILLINOIS, } ss.
County of Cook. }

Oliver E. Pagin, being duly sworn, on his oath, states that he has read the foregoing bill by him subscribed, and that the statements

therein are true, except as to such matters as are stated on information and belief, and as to those, he believes them to be true.

OLIVER E. PAGIN.

Subscribed and sworn to before me this 10th day of May, 1902.

MARSHALL E. SAMPSELL,
Clerk Circuit Court United States for the Northern District of Illinois.

(Endorsed:) Filed May 10, 1903 Marshall E. Sampsell clerk.

22 And on to-wit: the 14th day of May, 1902, a writ of subpœna issued out of the clerk's office of said court directed to the marshal of said district to execute, which said subpœna together with the memorandum thereto attached and the marshal's return thereon endorsed is in the words and figures following to-wit:

FORM No. 186.

23 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

The United States of America to Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations, and Nelson Morris, Edward Morris, and Ira N. Morris, copartners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes, Greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America, for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of July next, to answer the petition of the United States of America, filed May 10, 1902, in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this fourteenth day of May,

in the year of our Lord one thousand nine hundred and two, and of our Independence the 126th year.

[SEAL.] MARSHALL E. SAMPSELL, *Clerk.*

Memorandum.

The above named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

MARSHALL E. SAMPSELL, *Clerk.*

24 I have served the within writ within my district in the following manner to-wit:

Upon the G. H. Hammond Company by delivering a true copy thereof to J. P. Lyman, president of said company this 15th day of May, A. D. 1902.

Also upon the Hammond Packing Company by delivering a true copy thereof to J. P. Lyman, president of said company, this 15th day of May, A. D. 1902.

Also upon Frank E. Vogel, individually by delivering to him personally a true copy thereof, this 15th day of May, A. D. 1902.

Also upon J. P. Lyman, individually by delivering to him personally a true copy thereof, this 15th day of May, A. D. 1902.

JOHN C. AMES,
U. S. Marshal,
By G. M. WHERRITT, *Deputy.*

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

I have served this writ within my district as follows to-wit:

Upon Swift and Company by delivering a true copy thereof to Gustavus F. Swift, president of said company on May 15th, 1902.

Upon Gustavus F. Swift, Louis F. Swift, D. Edwin Hartwell Lawrence A. Carton, Louis Pfaelzer, William Russel, Albert H. Veeder and Henry Veeder, personally, by delivering a true copy thereof to each of them on May 15, 1902.

JOHN C. AMES,
U. S. Marshal,
By A. A. BACH, *Deputy.*

25 I have served this writ within my district in the following manner to-wit: Upon the within named "Armour and Company" a corporation, by delivering a true copy thereof to J. Ogden

Armour, president of the said company on the 15th day of May, A. D. 1902.

Upon the within named "Armour Packing Company" a corporation by delivering a true copy thereof to J. Ogden Armour vice president of the said company on the 15th day of May, A. D. 1902. I was unable to find the president of the said company within my district.

Upon the within named Schwartzchild and Sulzberger, a corporation by delivering a true copy thereof to Max J. Sulzberger, vice president of the said company on the 15th day of May, A. D. 1902. I was unable to find the president of the said company within my district.

Upon the within named "Cudahy Packing Company" a corporation by delivering a true copy thereof to Michael Cudahy, president of the said company on the 15th day of May, A. D. 1902,

Upon the within named Nelson Morris, Edward Morris and Ira N. Morris, co-partners as "Nelson Morris and Company" by delivering a true copy thereof to each of them personally on the 15th day of May, A. D. 1902,

Upon the within named Michael Cudahy, Albert F. Borchert, Charles F. Langdon, Calvin M. Favorite, Patrick A. Valentine, Arthur Meeker and J. Ogden Armour, by delivering a true copy thereof to each of them personally on the 15th day of May, A. D. 1902,

Upon the within named Thomas J. Conners by delivering to him personally a true copy thereof on the 16th day of May, A. D. 1902.

I was unable to find the within named Edward Cudahy, Ferdinand Sulzberger, Patrick Cudahy and W. H. Noyes within my district.

JOHN C. AMES,
U. S. Marshal.
WM. E. CASS, *Deputy.*

(Endorsed:) Filed May 20, 1902, Marshall E. Sampsell, clerk.

26 And on to-wit: the twentieth day of May, 1902, in the December term of said court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

27 Circuit Court of the United States, Northern District of Illinois, Northern Division.

TUESDAY, *May* 20, 1902.

Present: Hon. Peter S. Grosscup, circuit judge.

UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, THE Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations, and Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes.

This cause coming on to be heard, upon the motion of the complainants for a temporary injunction, as prayed in said bill, and the complainants having exhibited their sworn bill to the court, and divers affidavits in support thereof, no answer or demurrer having been filed thereto, nor any affidavits in resistance thereof, and the court having heard the arguments of counsel, and being fully advised in the premises, doth order that a temporary writ of injunction issue, restraining, until the final hearing or further order of this court, the said defendants, Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, The Schwartzchild and Sulzberger Company, corporations respectively, Nelson Morris, Edward Morris and Ira N. Morris, co-partners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur
Meeker, Thomas J. Conners, Charles F. Langdon, Michael
28 Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Brochert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, and each of them, their respective agents and attorneys, and all other persons acting or claiming, or assuming to act under their authority, or that of any of them, from entering into taking part in or performing any contract, combination or conspiracy, the purpose or effect of which

will be, as to trade and commerce in fresh meats, a restraint of trade or commerce among the several States, Territories, and the District of Columbia, either by directing or requiring their respective agents from refraining to bid against each other in the purchase of live stock; or collusively, and by agreement, refraining from bidding against each other at such sales; or by arbitrarily raising or lowering prices; or fixing uniform prices at which said meats will be sold, either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by imposing penalties for deviations from prices; or by establishing and maintaining uniform rules for the giving of credit to dealers in such matters; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers; or by any other method or device, the purpose and effect of which is to restrain trade and commerce, as aforesaid.

And, also, from violating the provisions of an act of Congress, approved July 2, 1890, entitled—"An act to protect trade and commerce against unlawful restraints and monopolies," by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia, by demanding, obtaining, or, with or
29 without the connivance of the officers or agents thereof, or of any of them, receiving from the railroad companies or other common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such fresh meats, from the points of the preparation and production of the same from live stock or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories, than those wherein the same are so prepared, or the District of Columbia, at less than the regular rates which may be established or in force on their several lines of transportation, under the provisions in that behalf of the laws of the United States for the regulation of commerce.

30 And on to-wit: the 21st day of May 1902, there issued out of the clerk's office of said court in said entitled cause a certain injunction writ, directed to the marshal of said district to execute, which said writ together with the marshal's return thereon endorsed is in the words and figures following to-wit:

Injunction Writ.

Circuit Court of the United States of America, Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA, *ss:*

To Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations, and Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes, and to your counselors, attorneys, solicitors, trustees, agents, clerks, employees, servants, and workmen, and to each and every of you, Greeting:

Whereas, it hath been represented to the judges of our circuit court of the United States for the northern division of the northern district of Illinois in chancery sitting, on the part of the United States of America, complainant, in its certain bill of complaint, exhibited in our said circuit court, on the chancery side thereof, before
31 the judges of said court, against you, the said Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations, and Nelson Morris, Edward Morris and Ira N. Morris, co-partners, as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes to be relieved touching the matters complained of, in which said bill it is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience. And it being ordered that a writ of preliminary injunction issue out of said court, upon said bill, enjoining and restraining you, and each of you, as prayed for in said bill; we, therefore, in consideration

thereof, and of the particular matters in said bill set forth, do strictly command you, the said Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations and Nelson Morris, Edward Morris and Ira N. Morris, co-partners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder and Henry
32 Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, and each of you, your respective agents and attorneys and all other persons acting or claiming or assuming to act under your authority, or that of any of you that you do absolutely desist and refrain from entering into, taking part in, or performing any contract combination or conspiracy, the purpose or effect of which will be as to trade and commerce in fresh meats, a restraint of trade or commerce among the several States, Territories, and the District of Columbia, either by directing or requiring their respective agents from refraining to bid against each other in the purchase of live stock or collusively and by agreement, refraining from bidding against each other at such sales; or by arbitrarily raising or lowering prices; or fixing uniform prices at which said meats will be sold, either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by imposing penalties for deviations from prices; or by establishing and maintaining uniform rules for the giving of credit to dealers in such matters; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers; or by any other method or device, the purpose and effect of which is to restrain trade and commerce as aforesaid.

And, also, from violating the provisions of an act of Congress, approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia, by demanding, obtaining, or, with or with-
33 out the connivance of the officers or agents thereof, or of any of them, receiving from the railroad companies or other common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such fresh meats, from the points of the preparation and production of the same from live stock or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories, than those wherein the same are so prepared, or the District of Columbia, at less than the regular

rates which may be established or in force, on their several lines of transportation, under the provisions in that behalf of the law of the United States for the regulation of commerce, until this honorable court in chancery sitting, shall make other order to the contrary. Hereof fail not, under the penalty of what the law directs.

To the marshal of the northern district of Illinois, to execute and return in due form of law.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, in said district this 21st [SEAL.] day of May, in the year of our Lord one thousand nine hundred and two and of our Independence the one hundred and twenty sixth year.

MARSHALL E. SAMPSELL, *Clerk.*

34 UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

I have served this writ within my district as follows to-wit:

Upon Swift & Company by reading the same to and within the presence and hearing of Gustavus F. Swift, president of said company and at the same time delivering to him a true copy thereof on May 22nd, 1902.

Upon Swartzchild & Sulzberger Co., by reading the same to and within the presence and hearing of Max Sulzberger, vice president of said company and at the same time delivering to him a true copy thereof on May 22nd, 1902, the president of said company not found in my district.

Upon Gustavus F. Swift, Louis F. Swift, Louis Pfaezler, William Russel, Albert H. Veeder and Henry Veeder, Lawrence A. Carton & D. Edwin Hartwell, by reading the same to and within the presence and hearing of each of them, and at the same time delivering to each of them personally a true copy thereof on May 22, 1902.

JOHN C. AMES,
U. S. Marshal,
By A. A. BACH.

I have served the within writ within my district in the following manner to-wit:

Upon the within named "Armour and Company" a corporation by reading the same to and in the presence and hearing of J. Ogden Armour, president of the said company, at the same time delivering to him personally a true copy thereof on the 22nd day of May A. D. 1902.

Upon the within named "Armour Packing Company" a corporation by reading the same to and in the presence and hearing of J. Ogden Armour, vice president of the said company at the same time delivering to him personally a true copy thereof, on the 22nd day

of May, A. D. 1902, I was unable to find the president of the said company within my district.

35 Upon the within named "Cudahy Packing Company" a corporation by reading the same to and in the presence and hearing of Michael Cudahy, president of the said company at the same time delivering to him personally a true copy thereof on the 22nd day of May, A. D. 1902.

Upon the within named Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as "Nelson Morris and Company" by reading the same to and in the presence and hearing of each of them personally at the same time delivering to each of them personally a true copy thereof on the 22nd day of May A. D. 1902.

Upon the within named J. Ogden Armour, Arthur Meeker, Charles F. Langdon, Thomas J. Conners, Michael Cudahy, Edward A. Cudahy, Calvin M. Favorite and Albert F. Borchart, by reading the same to and in the presence and hearing of each of them personally at the same time delivering to each of them personally a true copy thereof on the 22nd day of May, A. D. 1902.

Upon the within named Patrick A. Valentine by reading the same to and in his presence and hearing at the same time delivering to him personally a true copy thereof on the 24th day of May, A. D. 1902.

I was unable to find the within named Patrick Cudahy, Ferdinand Sulzberger, W. H. Noyes and Edward C. Swift within my district.

JOHN C. AMES,
U. S. Marshal.
WM. E. CASS, *Deputy.*

36 I have served the within writ within my district in the following manner to-wit:

Upon the G. H. Hammond Company by reading the same to and within the presence and hearing of J. P. Lyman, president of said company, at the same time delivering to him personally a true copy thereof this 21st day of May, A. D. 1902.

Also upon the Hammond Packing Company by reading the same to and within the presence and hearing of J. P. Lyman, president of said company, at the same time delivering to him personally a true copy thereof, this 21st day of May, A. D. 1902.

Also upon J. P. Lyman, individually by reading the same to and within his presence and hearing, at the same time delivering to him personally a true copy thereof on May 21st A. D. 1902.

Also upon Frank E. Vogel, individually by reading the same to and within his presence and hearing, at the same time delivering to him personally a true copy thereof on May 21st, A. D. 1902.

JOHN C. AMES,
U. S. Marshal,
By G. M. WHERRITT, *Dep.*

(Endorsed:) Filed May 24, 1902 Marshall E. Sampsell, clerk.

37 And on to-wit: the 3rd day of July, 1902, came John S. Miller and entered his appearance as solicitor for the defendants in said cause in words and figures following to-wit:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division. In Equity.

UNITED STATES OF AMERICA
vs.
SWIFT ET AL.
} No. 26291.

I hereby enter my appearance as solicitor for Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, Armour & Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzbergor Company, corporations; Nelson Morris, Edward Morris and Ira N. Morris, copartners under the name of Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, defendants in the above entitled case, at the July rule day, A. D. 1902.

JOHN S. MILLER.

(Endorsed:) Filed July 3, 1902, Marshall E. Sampsell, clerk.

38 And on to-wit: the fourth day of August, 1902, came Swift & Company, the Cudahy Packing Company, the Hammond Packing Company, the G. H. Hammond Company, Armour and Company, the Armour Company and Schwarzchild and Sulzberger, corporations by their solicitor Mr. John S. Miller and filed in the clerk's office of said court their certain joint and several demurrer in the words and figures following to-wit:

39 Form No. 134.

Demurrer in Chancery for Several Defendants.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY and Others. } In Chancery.

The joint and several demurrer of Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, The G. H. Hammond Company, Armour and Company, The Armour Packing Company, and Schwartzchild and Sulzberger, corporations, defendants, to the bill of complaint of The United States of America, the above named complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, do demur to the said bill, and, for causes of demurrer, show that the said complainant hath not, in and by said bill, made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought, and prayed for, from or against these defendants, or any of them.

That said bill or petition is multifarious; and is for several and distinct matters and causes, in many or some of which these respective defendants or some of them are not interested or concerned; and is for several and distinct and independent matters and causes which have no relation to each other and which cannot be embraced in one suit.

To so much of said bill or petition as seeks discovery of the books, papers, accounts, letters, telegrams, records and documents of these respective defendants, these defendants respectively and severally do demur, and for cause thereof show that the said complainant or petitioner hath not in and by said bill or petition in that behalf made or stated such a case as doth or ought to entitle them to any such discovery.

To so much of said bill or petition as seeks that these respective defendants may answer or make any discovery of or as to any matter and cause of complaint therein alleged these defendants do respectively and severally demur, and for cause thereof respectively show that the said complainant or petitioner hath not in and by said bill or petition in that behalf made or stated such a case as doth or ought to entitle them to any such discovery.

To each of the following other parts of said bill or petition separately the said defendants in like manner demur, viz.; such parts

of said bill as are respectively alleged or contained in the third, sixth, seventh, eighth, ninth, tenth and eleventh paragraphs or divisions of said bill or petition respectively and as seeks that these respective defendants may answer or make any discovery with respect to the matter and cause therein respectively alleged, and as seeks any relief with respect thereto or for or on account thereof respectively from or against these respective defendants, or any or either of them, and as to each of said respective parts so demurred to, for causes of demurrer they respectively show each of the like grounds first herein above specified as to said bill, viz.;

Said complainant hath not in and by the said part of said bill so demurred to made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought from or against these defendants or any or either of them. And that said part of said bill so demurred to is multifarious and is for several and distinct matters and causes which have no relation to each other and in some of which these respective defendants or some of them are not interested or concerned.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court, whether they, or either of them, shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed, with their reasonable costs and charges, in this behalf most wrongfully sustained.

JOHN S. MILLER,
Solicitor for Defendants.

40 STATE OF ILLINOIS, } ss:
County of Cook, }

Charles F. Langdon, D. Edwin Hartwell, Albert F. Borchert, and Jesse P. Lyman of said county being duly sworn say that they are respectively agents for said defendants in said within demurrer, each of which defendants is a corporation and each of said affiants being agent for one or more of said defendants, and that said within demurrer is not interposed for delay.

CHARLES F. LANGDON.
ALBERT F. BORCHERT.
D. EDWIN HARTWELL.
JESSE P. LYMAN.

Subscribed and sworn to before me, this 2nd day of August, 1902.

JOHN F. WAGNER,
[SEAL.] *Notary Public.*

I certify that in my opinion the foregoing demurrer is well founded in point of law.

JOHN S. MILLER,
Of Counsel for said Defendants.

(Endorsed:) Filed Aug. 4, 1902, Marshall E. Sampsell, clerk.

41 And on the same day to-wit: the fourth day of August, 1902, came Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as Nelson Morris and Company J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, by their solicitor Mr. John S. Miller and filed in the clerk's office of said court their certain demurrer in words and figures following to-wit:

42 Form No. 134.

Demurrer in Chancery for Several Defendants.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA *vs.* SWIFT AND COMPANY and Others. } In Chancery.

The joint and several demurrer of Nelson Morris, Edward Morris, and Ira N. Morris, copartners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes, defendants, to the bill of complaint of The United States of America, the above named complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, do demur to the said bill, and, for causes of demurrer, show that the said complainant hath not, in and by said bill, made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought, and prayed for, from or against these defendants, or any of them.

That said bill or petition is multifarious; and is for several and distinct matters and causes, in many or some of which these respective defendants or some of them are not interested or concerned; and

is for several and distinct and independent matters and causes which have no relation to each other and which cannot be embraced in one suit.

To so much of said bill or petition as seeks discovery of the books, papers, accounts, letters, telegrams, records and documents of these respective defendants, these defendants respectively and severally do demur, and for cause thereof show that the said complainant or petitioner hath not in and by said bill or petition in that behalf made or stated such a case as doth or ought to entitle them to any such discovery.

To so much of said bill or petition as seeks that these respective defendants may answer or make any discovery of or as to any matter and cause of complaint therein alleged these defendants do respectively and severally demur, and for cause thereof respectively show that the said complainant or petitioner hath not in and by said bill or petition in that behalf made or stated such a case as doth or ought to entitle them to any such discovery.

To each of the following other parts of said bill or petition separately the said defendants in like manner demur, viz.; such parts of said bill as are respectively alleged or contained in the third, sixth, seventh, eighth, ninth, tenth and eleventh paragraphs or divisions of said bill or petition respectively and as seeks that these respective defendants may answer or make any discovery with respect to the matter and cause therein respectively alleged, and as seeks any relief with respect thereto or for or on account thereof respectively from or against these respective defendants, or any or either of them, and as to each of said respective parts so demurred to, for causes of demurrer they respectively show each of the like grounds first herein above specified as to said bill, viz.;

Said complainant hath not in and by the said part of said bill so demurred to made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought from or against these defendants or any or either of them. And that said part of said bill so demurred to is multifarious and is for several and distinct matters and causes which have no relation to each other and in some of which these respective defendants or some of them are not interested or concerned.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court, whether they, or either of them, shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed, with their reasonable costs and charges, in this behalf most wrongfully sustained.

JOHN S. MILLER,
Solicitor for Defendants.

43 STATE OF ILLINOIS, } ss:
Cook County, }

Charles F. Langdon, D. Edwin Hartwell, Albert F. Borchert, and Jesse P. Lyman, of said county being duly sworn say that they are respectively four of the defendants in the within demurrer and make this affidavit on behalf of themselves and of each of said other defendants in said demurrer and that said within demurrer is not interposed for delay.

CHARLES F. LANGDON.
ALBERT F. BORCHERT.
D. EDWIN HARTWELL.
JESSE P. LYMAN.

Subscribed and sworn to before me, this 2nd day of August, 1902.

[SEAL] JOHN F. WAGNER,
Notary Public.

I certify that in my opinion the foregoing demurrer is well founded in point of law.

JOHN S. MILLER,
Of Counsel for said Defendant.

(Endorsed:) Filed August 4, 1902. Marshall E. Sampsell, clerk.

44 And on to-wit: the sixteenth day of December, being one of the days of the regular December term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

Order of December 16, 1902.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, a Corporation, ET AL. } 26291.

Now come the parties by their solicitors, the United States being represented by Mr. S. H. Bethea, district attorney and by Mr. William A. Day, the defendants being represented by Mr. John S. Miller.

And now comes on for argument the demurrers to the bill of complaint herein, and the court having heard the arguments of counsel to conclusion and not being sufficiently advised in the premises, takes time to consider, counsel being ruled to file briefs herein within two weeks; the restraining order herein to stand and remain in full force and effect until the court shall otherwise order and direct.

45 And on to-wit: the eighteenth day of February, 1903, there was filed in the clerk's office of said court in said entitled cause a certain opinion by Judge Grosscup, in the words and figures following to-wit:

46 *Opinion.*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
v.
SWIFT & COMPANY ET AL.

The defendants are seven corporations, one copartnership, and twenty-three other persons, and the petition is fairly summarized as follows:

1st. "That at the time of its filing they had been and then were engaged in the business of buying live stock at divers points throughout the United States where stockyards existed, and slaughtering the same at such places in different States and converting the same into fresh meats for human consumption.

2nd. "That they had been and then were engaged in the business of selling such fresh meats at the places where prepared, to dealers and consumers in divers other States and Territories of the United States and in foreign countries, and shipping the same when so sold, from said places of preparation to such dealers and consumers, pursuant to such sales, and were thus engaged in trade and commerce among the several States and Territories and with foreign nations.

3rd. "That they had been and then were engaged in the business of shipping such fresh meats from said points where so prepared, by common carriers to the respective agents of the defendants located at and near the principal markets of such meats in other States and Territories and in foreign countries for sale by those agents in those markets to dealers and consumers, which they there sold through their agents and were thus engaged in trade and commerce among the several States and Territories and with foreign nations.

4th. "That of the total volume of trade and commerce among the said States and Territories in fresh meats the said defendants together controlled about sixty per cent.

5th. "That as to such trade and commerce among the several States and Territories and foreign nations in fresh meats, the said defendants should, and but for the acts hereinafter complained of would be and remain in competition with each other.

6th. "That said defendants, in violation of the act of Congress of July 2, 1890, and in order to restrain competition among themselves as to the purchase of livestock necessary to the production of the meats produced by them, have engaged in, and intend to continue

an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents at the said several stockyards and markets where they customarily purchase such livestock, which livestock is produced and owned principally in other States and Territories of the United States, and shipped by the owners thereof to such stockyards for competitive sale, to refrain from bidding against each other when making purchases of such livestock, and by these means inducing and compelling the owners of such livestock to sell the same at less prices than they would receive if such bidding were competitive; which combination and conspiracy is in restraint of trade and commerce among the several States, etc.

7th. "That said defendants, in further violation of said act, and in order to further restrain competition among themselves, which would otherwise exist, as to the purchase of livestock necessary to the production of the meats produced by them, have engaged in and intend to continue an unlawful combination and conspiracy among themselves for bidding up through their agents the prices of livestock for a few days at said stockyards, thereby inducing shippers from other States and Territories to make large shipments of such livestock to such stockyards, and then refrain from bidding up such livestock, and thereby obtaining such livestock at prices much less than it would bring in the regular way of trade.

8th. "That said defendants, in further violation of said act, and in order to restrain and destroy competition among themselves as to such trade and commerce and to monopolize the same, have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily, from time to time, lower and fix prices, and maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats to dealers and consumers throughout said States and Territories and foreign countries. That the arbitrary raising, lowering, fixing, and maintaining of said prices is effected through the action of divers of their agents in secretely holding periodical meetings, and there agreeing upon the prices to be adopted by said defendants respectively in such trade and commerce, which said prices are notified by letters and telegrams, and are adhered to in their sales, which are made directly, and among other ways; and by collusively restricting and curtailing the quantities of such meats shipped by them in pursuance of such combination, and imposing against each other divers penalties for any deviations from such prices, and establishing a uniform rule for the giving of credit to dealers throughout the said States and Territories and foreign countries, and for the conduct of the business of such dealers, with penalties for violations thereof, by notifying each other of the delinquencies of said dealers, and keeping what is commonly known as a "black list" of such delinquents, and refusing to sell meats to any of such delinquent dealers.

9th. "And the said defendants, in violation of the provisions of the said act, have engaged in and intend to continue an unlawful

combination and conspiracy, to direct and require their respective agents at and near many of the markets for such fresh meats throughout the United States and Territories to arbitrarily make and impose uniform charges for cartage for delivery, upon making such sales to dealers and consumers in those markets of the meats shipped to them through said agents by the said defendants respectively from their several points of preparation, thereby increasing the charges for such meats to said dealers and consumers.

10th. "That notwithstanding the common carriers by railroad subject to the provisions of the laws of the United States for the regulation of commerce, have established and published their schedule of rates, fares and charges for the transportation of live-stock, and for the transportation of meats, which are the only lawful rates for such transportation, the said defendants, intending thereby to monopolize the commerce aforesaid, and prevent competition therein, have made and are making agreements and arrangements with divers officers and agents of such common carriers whereby the said defendants were to receive, and will continue to receive, by means of rebates and other devices, unlawful rates for such transportation, less than the lawful rates, which rebates they divide, among themselves, and will continue to do so unless restrained by the injunction of this court, which is a scheme to monopolize,
47 and also a combination and conspiracy in restraint of trade and commerce among the several States and Territories and with foreign nations.

11th. "That the said defendants now are, and for years past have been in combination and conspiracy with each other and with the railroad companies and others to complainant unknown, to obtain a monopoly of the supply and distribution of fresh meats throughout the United States and its Territories and foreign countries, to that end the defendants do and will artificially restrain such commerce and put in force abnormal, unreasonable and arbitrary regulations for the conduct of their own and each other's business, effecting the same from the shipment of the livestock from the plains to the final distribution of the meats to the consumer. All to the injury of the people and in defiance of law."

To this petition five of the defendant corporations have filed joint and several demurrers, the grounds of which are as follows:

"The bill of complaint does not allege any contract, combination or conspiracy in restraint of interstate or foreign trade or commerce within the meaning of said act of Congress of July 2, 1890.

"The bill of complaint does not allege any acts of defendants monopolizing, or attempting to monopolize, or combining or conspiring to monopolize any part of such trade or commerce within the meaning of said act.

"If the act of Congress in question should be given a construction which would sustain this bill of complaint, such act would violate the provisions of the Constitution of the United States.

"Said bill is multifarious.

"There is a misjoinder of causes of action and of persons in said bill, as alleged in said demurrers.

"The said bill of complaint and the allegations and charges therein are not sufficiently definite or specific, but are too general and indefinite."

The hearing is on these demurrers.

After the foregoing statement of facts, GROSSCUP, circuit judge, delivered the opinion:

Commerce, briefly stated, is the sale or exchange of commodities. But that which the law looks upon as the body of commerce is not restricted to specific acts of sale or exchange. It includes the intercourse—all the initiatory and intervening acts, instrumentalities and dealings—that directly bring about the sale or exchange. Thus, though sale or exchange is a commercial act, so also is the solicitation of the drummer, whose occupation it is to bring about the sale or exchange. (Brennan *v.* Titusville, 153 U. S. 289.) The whole transaction from initiation to culmination is commerce.

When commerce, thus broadly defined, is between parties dealing from different States—to be effected so far as the immediate act of exchange goes by transportation from State to State it is "commerce between the States," within the meaning of the Constitution, and the statute known as the Sherman act. But it is not the transportation that makes the transaction interstate commerce. That is an adjunct only, essential to commerce, but not the test. The underlying test is that the transaction, as an entirety, including each part calculated to bring about the result, reaches into two or more States; and that the parties dealing with reference thereto deal from different States.

An interstate commercial transaction is, in this sense, an affair rising from different States, and centering in the act of exchange, each essential part of the affair being as much commerce as is the center. With this definition in mind, let us see what the transaction made out in the petition is.

For the purpose of clear exposition, the facts set forth in the petition should be separated into two groups: Those that are intended to bring the transaction within the body of interstate commerce; and those that are intended to fix upon such transaction the character of unlawful combination and conspiracy. Shorn of verbiage, and of immaterial accessories, the first group may be stated as follows: The defendants, controlling sixty per cent. of the trade and commerce in fresh meats in the United States, buy, in the course of their business, livestock shipped from points throughout the United States; which, having been converted into fresh meats, is sold again by them at the places where prepared, to dealers and consumers in other States; or is sold through their agents; located in other States, to dealers and consumers in the States where the agents, are located. The shipment in the first class of sales is made directly from the places where the meat is prepared to the dealers and consumers in

other States, and in the latter class to the agents in the other States who, upon sale, deliver directly to the dealer and consumer.

What may be called the body of these transactions is two-fold. It reaches backward to the purchase of cattle that come to defendants from States other than those in which defendants manufacture; and it reaches forward to the sale of the meats, after conversion, to parties dealing with respect thereto from other States, followed by shipments into the other States. Each of these transactions constitute, in my judgment, interstate commerce. The purchase of cattle shipped habitually from other States to the markets where defendants purchase, in the expectation that the purchase will be made by the slaughter companies, is an act of interstate commerce. Hopkins' case, 171 United States, 590. It is none the less so, merely because the local incidents or facilities for such purchase are to be regarded as outside the interstate character of the transaction.

Thus the local commission broker, or the men who drive the cattle from the pens to the slaughter house, need not, in any survey of the transaction, be held to be within the interstate status of the transaction. With them, it is essentially the same whether the cattle come from the State in which the purchase is made, or from other States. They are aids or facilities only, and as such are merely local incidents. But the purchase of livestock thus brought habitually from other States, relates in its larger bearings, to a transaction that had its beginnings in other States. The original shipments are influenced and to a large extent brought about, by the character of the purchase.

The purchase, the shipments, and the transportation, are commercially interdependent; and in any survey of the transaction, as an entirety, none could be omitted. They each go to make the transaction, and covering different States, they stamp the transaction—not all its incidents, but its essential body—as a transaction in interstate commerce.

Coming to the other branch of the transaction—the sales by the defendants—a like result follows. Unquestionably it is interstate commerce when purchasers from other States buy directly from the defendants, and have the meats shipped to them by the vendors. The *situs* of such a transaction, both as to initiatory intercourse, and as to transportation in furtherance of the exchange, includes a State other than the one from which defendants deal.

I think the same is true of meat sent to agents, and sold from their stores. The transaction in such case, in reality, is between the purchaser and the agents' principal. The agents represent the principal at the place where the exchange takes place but the transaction, as a commercial entity, includes the principal, and includes him as dealing from his place of business. Indeed such privity exists between the principal and the transaction, that he could, at the instant as a citizen of another State, sue upon the transaction in the Federal courts; nor have I any question that if the conditions of this case were reversed, so that defendants were invoking the shelter, instead

of seeking to escape the obligations of the commerce clause, Federal law would be found equal to the protection asked.

I need not dwell on the contention of defendants that the fresh meats in the hands of the agents are subject to ordinary State taxation, or upon the cases cited in this connection. It is enough to say that because a thing can be taxed by the State, it does not follow that it lies outside the body of interstate commerce; for commerce, interstate as well as domestic, is subject to the police and taxing power of the State, so long as the exercise of such power does not interfere with the National Government's exclusive right of regulation. Addleston Pipe & Steel Company *v.* United States, 175 U. S. 25; Austin *v.* Tennessee, 179 U. S. 349; Prentice and Egan on the Commerce Clause of the Constitution, page 27. Nor shall I differentiate the Knight case, the Hopkins case and other cases urged upon me as applicable to the case under consideration. A study of these cases will show that they are not in conflict with the views already expressed.

The next inquiry is this: Do the facts set forth in the second grouping, fix upon the transaction, even though the transactions be within the body of interstate commerce, the character of unlawful combination. The averments of the petition in this respect may be summarised as follows:

That the defendants are engaged in an unlawful combination and conspiracy under the Sherman act in (*a*) directing and requiring their purchasing agents at the markets where the livestock was customarily purchased, to refrain from bidding against each other when making such purchases; (*b*) in bidding up through their agents, the prices of livestock for a few days at a time, to induce large shipments, and then ceasing from bids, to obtain the livestock thus shipped at prices much less than it would bring in the regular way; (*c*) in agreeing at meetings between them upon prices to be adopted by all, and restriction upon the quantities of meat shipped; (*d*) in directing and requiring their agents throughout the United States to impose uniform charges for cartage for delivery, thereby increasing to dealers and consumers the charges for such meats; and (*e*) in making agreements with the transportation companies for rebates and other discriminative rates.

No one can doubt that these averments state a case of combination. Whether the combination be unlawful or not, depends on whether it is in restraint of trade. The general meaning of that term is no longer open to inquiry. It has been passed upon carefully by the Supreme Court in the Freight Association case, 166 United States 290, and in the Traffic case, 171 United States 558, where the whole subject was a year later elaborately re-argued. I will not extend into this opinion even a summary of these cases. It is clear from them that restraint of trade is not dependent upon any consideration of reasonableness or unreasonableness in the combination averred; nor is it to be tested by the prices that result from the combination. Indeed, combination that leads directly to

lower prices to the consumer may, within the doctrine of these cases, even as against the consumer, be restraint of trade; and combination that leads directly to higher prices, may, as against the producer be restraint of trade. The statute thus interpreted, has no concern with prices, but looks solely to competition, and to the giving of competition full play, by making illegal any effort at restriction upon competition. Whatever combination has the direct and necessary effect of restricting competition, is, within the meaning of the Sherman act as now interpreted, restraint of trade.

Thus defined, there can be no doubt that the agreement of the defendants to refrain from bidding against each other in the purchase of cattle, is combination in restraint of trade; so also their agreement to bid up prices to stimulate shipments, intending to cease from bidding when the shipments have arrived. The same result follows when we turn to the combination of defendants to fix prices upon, and restrict the quantities of meat shipped to their agents or their customers. Such agreements can be nothing less than restriction upon competition, and, therefore, combination in restraint of trade; and thus viewed, the petition, as an entirety, makes out a case under the Sherman act.

The demurrer challenges the petition for multifariousness and misjoinder of parties; and challenges each paragraph of the petition, standing separately, as insufficient to constitute a case under the Sherman act. But the paragraphs can not properly be looked upon as separate causes of action. They relate clearly to each other, thus constituting a whole that is the sum of the parts; and thus regarded, are free from the objections indicated.

It may be true that the way of enforcing any decree under this petition is beset with difficulties, and that a literal enforcement may result in vexatious interference with defendant's affairs. But in the inquiry before me, I am not at liberty to stop before such considerations. The Sherman act, as interpreted by the Supreme Court, is the law of the land, and to the law as it stands both court and people must yield obedience.

The demurrer is overruled, and the motion for preliminary injunction granted.

(Endorsed:) Filed Feb. 18, 1903 Marshall E. Sampsell clerk

48 And on to-wit: the fourth day of April, 1903, in the December term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup circuit judge, appears the following entry to-wit:

Order of April 4, 1903.

UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations, and Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes. } 26291.

This cause coming on to be heard upon the demurrers of Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, the G. H. Hammond Company, Armour and Company, the Armour Packing Company and Schwartzchild and Sulzberger, corporations and Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker,
Thomas J. Conners, Charles F. Langden, Michael Cudahy,
49 Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, to the bill of complaint, after argument by counsel the court being fully advised in the premises, the demurrers are overruled.

Thereupon the cause came on upon the motion of complainant for a preliminary injunction as prayed in the bill; and the court having heard arguments of counsel and being fully advised in the premises, doth order that a preliminary injunction issue restraining, until the final hearing or the further order of this court, the said defendants, Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations and Nelson Morris, Edward Morris and Ira N. Morris, co-partners as Nelson Morris and Company, J. Ogden Armour Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Bor-

chert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, and each of them, their respective agents and attorneys, and all other persons acting or claiming so to act, from entering into, taking part in, or performing any contract, combination, or conspiracy, the purpose or effect of which will be, as to trade and commerce in fresh meats between the several States and Territories and the District of
50 Columbia, a restraint of trade, either by directing, or requiring their respective agents to refrain from bidding against each other in the purchase of live stock; or collusively and by agreement to refrain from bidding against each other at the sales of live stock; or by combination, conspiracy or contract, raising or lowering prices, or fixing uniform prices at which said meats will be sold either directly or through their respective agents, or by curtailing the quantity of such meats shipped to such markets and agents; or by establishing and maintaining rules for the giving of credit to dealers in such meats, the effect of which rules will be to restrict competition; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers, the effect of which will be to restrict competition; or by any other method or device, the purpose and effect of which is to restrain trade and commerce as aforesaid. But nothing herein shall be construed to prohibit the said defendants from agreeing upon charges for cartage and delivery, and other incidents connected with local sales, where such charges are not calculated to have any effect upon competition in the sale and delivery of meats; nor from establishing and maintaining rules for the giving of credit to dealers, where such rules in good faith are calculated solely to protect defendants against dishonest or irresponsible dealers; nor from curtailing the quantity of meats shipped to a given market, where the purpose of such arrangement in good faith is to prevent the over accumulation of meats as perishable articles in such markets.

The said defendants are hereby restrained also, from violating the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful re-
51 straints and monopolies," by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia, by demanding, obtaining or, with or without the connivance of the officers or agents thereof, or of any of them, receiving from the railroad companies or orther common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such meats, from the points of the preparation and production of the same from live stock or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories, than those

wherein the same are so prepared, or the District of Columbia, at less than the regular rates which may be established or in force, on their several lines of transportation, under the provisions in that behalf of the laws of the United States for the regulation of commerce.

But nothing herein contained shall be construed to restrain or interfere with the action of any single company or firm by its or their officers or agents (whether such officers or agents are themselves personally made parties defendant hereto or not) acting with respect to its or their own corporate or firm business, property or affairs.

It is further ordered that the defendants answer said bill on or before the 21st day of April A. D. 1903.

52 And on to-wit: the twenty second day of April, 1903, being one of the days of the regular December term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

Order of April 22, 1903.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York, Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners under the Name of Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of New York. } 26291.

The appearance of the above named defendants having been heretofore duly entered, and demurrers in their behalf to the peti-
53 tion herein having been filed and, after a full hearing thereon, overruled by the court, and the court having thereupon ordered the said defendants to answer the said petition on or before the twenty-first day of April, 1903, and the said defendants having failed to comply with the said order and to file their answer in accordance therewith, and having elected to stand by their respective demurrers;

Now therefore, on motion of S. H. Bethea, United States attorney for this district, it is ordered that the default of the said defendants and each of them be entered herein, in accordance with the rules in such case made and provided.

54 And on to-wit: the 26th day of May, 1903, in the December term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

Order of May 26, 1903.

UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, *et al.* } 26291.

Now comes S. H. Bethea, United States district attorney and suggests the death of Gustavus F. Swift, one of the defendants in the above entitled cause.

55 And on to-wit: the twenty-sixth day of May, 1903, being one of the days of the regular December term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

Decree of May 26, 1903.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York, Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of the State of New York. } 26291.

This cause came on to be heard upon the demurrers of the defendants, and the court, being fully advised in the premises,

56 overruled the same, and ordered the defendants to answer the petition herein on or before the twenty-first day of April, 1903, whereupon on the twenty-second day of April, 1903, the defendants having elected to stand by their demurrers, and having failed to file their answer to the petition, the default of the defendants and each of them was entered herein upon motion of S. H. Bethea, United States attorney:

And now, upon motion of the said attorney, the court doth order that the preliminary injunction heretofore awarded in this cause, to restrain the said defendants and each of them, their respective agents and attorneys, and all other persons acting in their behalf, or in behalf of either of them, or claiming so to act, from entering into, taking part in, or performing any contract, combination or conspiracy, the purpose or effect of which will be, as to trade and commerce in fresh meats between the several States and Territories and the District of Columbia, a restraint of trade, in violation of the provisions of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," either by directing or requiring their respective agents to refrain from bidding against each other in the purchase of live stock; or collusively and by agreement to refrain from bidding against each other at the sales of live stock; or by combination, conspiracy or contract raising or lowering prices or fixing uniform prices at which the said meats will be sold, either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by establishing and maintaining rules for the giving of credit to dealers in such meats, the
57 effect of which rules will be to restrict competition; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers, the effect of which will be to restrict competition; or by any other method or device, the purpose and effect of which is to restrain commerce as aforesaid; and also from violating the provisions of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia, by demanding, obtaining, or, with or without the connivance of the officers or agents thereof, or of any of them, receiving from railroad companies or other common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such meats, from the points of the preparation and production of the same from live stock or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories than those wherein the same are so prepared, or the District of Columbia, at less than the regular rates which may be established or in force on their several lines of

transportation, under the provisions in that behalf of the laws of the said United States for the regulation of commerce, be and the same is hereby made perpetual.

But nothing herein shall be construed to prohibit the said defendants from agreeing upon charges for cartage and delivery, and other incidents connected with local sales, where such charges are
58 not calculated to have any effect upon competition in the sales and delivery of meats; nor from establishing and maintaining rules for the giving of credit to dealers where such rules in good faith are calculated solely to protect the defendants against dishonest or irresponsible dealers, nor from curtailing the quantity of meats shipped to a given market where the purpose of such arrangement in good faith is to prevent the over-accumulation of meats as perishable articles in such markets.

Nor shall anything herein contained be construed to restrain or interfere with the action of any single company or firm, by its or their officers or agents (whether such officers or agents are themselves personally made parties defendant hereto or not) acting with respect to its or their own corporate or firm business, property or affairs.

59 And on to-wit: the 18th day of July, 1903, came the defendants in said entitled cause by their solicitor Mr. John S. Miller and filed in the clerk's office of said court their certain petition for appeal in words and figures following to-wit:

Petition for Appeal.

In the Circuit Court of the United States in and for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York, Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of the State of New York. } No. 26291.

Come now the above named defendants, Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, and Armour and Company, corporations under the laws of Illinois; The Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations under the laws of New Jersey, Michigan and New York respectively; Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine,
60 Calvin M. Favorite, Arthur Meeker, Thomas J. Connors, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, citizens of Illinois; Edward C. Swift, a citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, citizens of the State of New York, and conceiving themselves to be aggrieved by the order and decree of this court made and entered in the above entitled cause on the 26th day of May, 1903, wherein and whereby (among other things) said bill was sustained and it was ordered, adjudged and decreed that the demurrer of these defendants to the complainant's

bill of complaint be overruled and that the preliminary injunction awarded in this case, to restrain the said defendants and each of them, and all persons acting in their behalf, or in behalf of either of them, from entering into, taking part in, or performing any contract, combination, or conspiracy, the purpose or effect of which will be, as to trade and commerce in fresh meats between the several States and Territories and the District of Columbia, a restraint of trade in violation of the provisions of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," either by directing or requiring their respective agents to refrain from bidding against each other in the purchase of live stock; or collusively and by agreement to refrain
61 from bidding against each other at the sales of live stock; or by combination, conspiracy or contract raise or lower prices or fix uniform prices at which meats shall be sold, either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by establishing and maintaining rules for the giving of credit to dealers in such meats, the effect of which rules will be to restrict competition; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers, the effect of which will be to restrict competition; or by any other method or device, the purpose and effect of which is to restrain commerce as aforesaid; and also from violating the provision of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia, by demanding, obtaining, or, with or without the connivance of the officers or agents thereof, or of any of them, receiving from railroad companies or other common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such meats, from the points of the preparation and production of the same from live stock, or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories than those wherein the
61½ same are so prepared, or the District of Columbia, at less than the regular rates which may be established or in force on their several lines of transportation, under the provisions in that behalf of the laws of the said United States for the regulation of commerce, be sustained and be and the same was made perpetual, does hereby appeal from the said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors herewith filed herein, and they pray that this appeal may be allowed and that a transcript of the record, papers and proceedings upon which the said order and decree was made, duly

authenticated, may be sent to the Supreme Court of the United States.

JOHN S. MILLER,
Solicitors for said Defendants.

(Endorsed:) Filed July 18, 1903. Marshall E. Sampsell, clerk.

And on the same day to-wit: the 18th day of July, 1903, came the defendants in said entitled cause by their solicitor and filed in the clerk's office of said court their certain assignment of errors in words and figures following to-wit:

62 UNITED STATES OF AMERICA, *Northern District of Illinois, Northern Division,* } *ss:*

In the Circuit Court of the United States in and for the Northern Division of the Northern District of Illinois.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company; Nelson Morris, Edward Morris, and Ira N. Morris, Copartners, as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes. } No. 26291.

Assignment of Errors on Appeal to the Supreme Court of the United States.

And now come the said defendants, respectively, by John S. Miller, their solicitor, and with their petition for the allowance of an appeal herein to the Supreme Court of the United States
63 present and file this, their assignment of errors, upon which they will, respectively, rely upon their appeal from the decree of this honorable court rendered and entered herein on the twenty-sixth day of May, 1903, to the said Supreme Court, and in that behalf they, respectively, jointly and severally say that in the said record and proceedings and in the entry of the said decree there is manifest error, in this, to wit:

1. The circuit court erred in overruling and in not sustaining the general demurrers of these defendants, respectively, to the said bill of complaint or petition of the United States.

2. The circuit court erred in not holding and ruling that the said bill of complaint or petition does not allege any contract, combination or conspiracy in restraint of interstate or foreign trade or commerce, within the meaning of said act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; and in not sustaining the said respective demurrers on that ground.

3. The circuit court erred in not holding and ruling that said bill of complaint does not allege any acts of defendants monopolizing or attempting to monopolize, or combining or conspiring to monopolize any part of said trade or commerce, within the meaning of said act; and in not sustaining said respective demurrers to said bill or petition on that ground.

64 4. The circuit court erred in not holding and ruling that if the said act of Congress of July 2, 1890, has and is to be given a construction which would make the said supposed acts of the said defendants in the said bill or petition alleged, a violation thereof, for which the said defendants would be subject to the penalties, injunctions or processes by said act prescribed, the said act would and does violate the provisions of the Constitution of the United States; and in not sustaining the said respective demurrers on that ground.

5. The circuit court erred in not holding and ruling that there is in said bill or petition a misjoinder of causes of action and of persons, as alleged in the said demurrers; and in not sustaining the said respective demurrers on that ground.

6. The circuit court erred in not holding and ruling that the said bill of complaint and the allegations and charges therein are not sufficiently definite or specific, but are too general and indefinite to call for or require any answer from the said respective defendants; and in not sustaining the said respective demurrers to said bill or petition upon that ground.

7. The said circuit court did not have jurisdiction to enter the said decree nor to award the said injunction against these defendants.

65 8. The circuit court erred in not holding and ruling that said bill or petition was multifarious, and in not sustaining the respective demurrers of these defendants thereto upon that ground.

9. The circuit court erred in not holding and ruling that said bill or petition was for several and distinct matters and causes, in many or some of which these respective defendants, or some of them, are not interested or concerned; and in not sustaining the demurrers thereto upon that ground.

10. The circuit court erred in not holding and ruling that the respective matters and causes in the sixth paragraph of said bill or

petition, and the matters and causes in the said seventh paragraph of said bill or petition, and the respective matters and causes in the said eighth paragraph of said bill or petition, and the respective matters and causes in the said ninth paragraph of said bill or petition, and the said respective matters and causes in the said tenth paragraph of said bill or petition, and the said matters and causes in the said eleventh paragraph of said bill or petition, were distinct and different and independent and unconnected matters and causes, and not the same matters or causes, and that the same were improperly joined in the said bill or petition; and in not sustaining the said respective demurrers upon that ground.

66 11. The circuit court erred in not holding that the supposed unlawful combination and conspiracy between the said defendants for directing and requiring their respective purchasing agents at the said several stock yards and markets to refrain from bidding against each other except perfunctorily and without good faith, in said sixth paragraph of said bill or petition charged, and the supposed unlawful combination and conspiracy among themselves for bidding up, through their respective purchasing agents, the prices of live stock for a few days at said stock yards and markets, in said seventh paragraph of said bill or petition charged, and the said supposed unlawful combination and conspiracy to raise, lower and fix prices and to maintain uniform prices at which they will sell fresh meats to dealers and consumers throughout the States and Territories of the United States and the District of Columbia and foreign countries, in the said eighth paragraph of said bill or petition charged, and the said supposed unlawful combination and conspiracy to direct and require their respective agents at and near many of the markets for such fresh meats throughout the said States and Territories and the District of Columbia to arbitrarily make and impose uniform charges for cartage for the delivery, upon making sales to dealers and consumers in those markets, of the meats shipped to them through the said agents by the said defendants, respectively, from their several points of preparation of the same, in the said ninth paragraph of said bill or petition charged, and the said supposed engaging in and continuing of arrangements and agreements with divers officers and agents of common carriers, in the said tenth paragraph

67 of said bill or petition charged, whereby it is therein charged said defendants were to receive and have received and will continue to receive unlawful rates for transportation of livestock and meats, and the said supposed combination and conspiracy of said defendants with each other and with the railroad companies and others to complainant unknown, to obtain a monopoly of the supply and distribution of fresh meats throughout the United States and its Territories, and shipments thereof to foreign countries, in the said eleventh paragraph of said bill or petition charged,—are, respectively, distinct and different and unconnected and independent supposed combinations, conspiracies, matters and causes, and that the same

are improperly joined in the said bill; and in not sustaining said respective demurrers to said bill or petition on that ground.

12. That said circuit court erred in not sustaining the said respective demurrers to so much of the said bill or petition as seeks discovery of the books, papers, accounts, letters, telegrams, records and documents of said respective defendants, and in overruling the said respective demurrers. And the court erred in not holding and ruling that the said prayer and portion of said petition last mentioned, seeking discovery as aforesaid, does not contain any showing of probable cause, supported by oath or affirmation, as required by the fourth amendment to the Constitution of the United States, or otherwise comply with said fourth amendment, but violates and if allowed would violate the provisions of the fourth amendment
68 to the Constitution of the United States, and would violate the provisions of the fifth amendment to the Constitution of the United States.

13. The said circuit court erred in not sustaining the said respective demurrers to so much of the said bill or petition as seeks that these respective defendants may answer or make any discovery of or as to any matter or cause of complaint therein alleged, and in overruling the same. And the court erred in not holding and ruling that the said prayer and portion of said petition last mentioned, seeking answer or discovery as aforesaid, does not contain any showing of probable cause, supported by oath or affirmation, as required by the fourth amendment to the Constitution of the United States, or otherwise comply with said fourth amendment, but violates and if allowed would violate the provisions of the fourth amendment to the Constitution of the United States, and would violate the provisions of the fifth amendment to the Constitution of the United States.

14. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the sixth paragraph thereof and as alleges that said defendants have engaged in and intend to continue in an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents at the said several stock yards and markets where
69 they customarily purchase livestock necessary to the production of meats produced by them, and in said paragraph sixth mentioned, to refrain from bidding against each other except perfunctorily and without good faith, when making purchases of such livestock on behalf of the said defendants, respectively, and by that means inducing and compelling such owners of such livestock to part with the same at prices less than they would receive at such stock yards and markets if such bidding were competitive as between said purchasing agents, and that defendants have caused and are causing their agents to refrain from bidding accordingly and have induced and are inducing each other and will, unless restrained by said court, continue, in pursuance of such supposed conspiracy,

to induce each other to refrain from bidding as aforesaid, which said supposed combination and conspiracy is there alleged to be one in restraint of trade and commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph sixth does not allege any acts or facts to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants; and in not holding and
70 ruling that the said sixth paragraph does not allege any contract, combination or conspiracy on the part of the respective defendants, in restraint of interstate or foreign trade or commerce, within the meaning of said act; and does not allege any monopolizing or attempting to monopolize, or any combination or conspiring to monopolize any part of *of* interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said sixth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

15. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the seventh paragraph thereof and as alleges that said defendants have engaged in and intend to continue and unlawful combination and conspiracy among themselves for bidding up, through their respective purchasing agents, the prices of live stock for a few days at a time at the said stock yards and markets, so that the market reports will show prices much higher than the state of the trade will warrant, and thereby inducing owners of such lifestock in divers other of the said States and Territories to simultaneously make large shipments of such livestock from such other States and Territories to said stock yards and open markets, instead of shipping the same to more natural and advantageous markets and at more natural and advantageous times in the due and proper course of such trade and business, and by
71 this means and by reason of the resulting large offerings there of such livestock (and by thereupon refraining from bidding against each other for the same), obtaining such livestock at prices much less than it would bring in the regular way of trade if such combination and conspiracy were not so engaged in and continued; and have been and are now from time to time through their said agents so fraudulently bidding up the prices of such live stock, and will, unless restrained by said court, continue so to do, and that said combination and conspiracy last aforesaid is one in restraint of trade and commerce among the several States and Territories of said United States and the District of Columbia and with foreign countries.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph seventh does not allege any acts or facts to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said seventh paragraph does not allege any contract, combination or conspiracy on the part of the respective defendants, in restraint of interstate or foreign trade or commerce, within the meaning of said act; and does not allege any monopolizing or attempt to monopolize, or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce
72 by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said seventh paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

16. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the eighth paragraph thereof and as alleges that the said defendants have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily from time to time raise, lower and fix prices, and to maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats to dealers and consumers throughout the said States and Territories and the District of Columbia and foreign countries; and that the arbitrary raising, lowering, fixing and maintaining such prices, in pursuance of the said combination and conspiracy, is being and is to be effected through the action of divers of their agents and attorneys in secretly holding periodical meetings at some place or places, and there agreeing upon the prices to be adopted by said defendants, respectively, in said trade and commerce, to be enforced by them until at a subsequent meeting the same may be changed, and that said prices are notified by letters and telegrams in plain language and divers codes and ciphers, and they have been and are maintained by defendants by adhering to the same in their sales made directly and, among other ways, by collusively
73 restricting and curtailing the quantities of such meats shipped by them in such trade and commerce to the markets aforesaid, whenever necessary or conducive to the maintaining of the prices so fixed; by imposing against each other divers penalties for any and all deviations by said defendants or any of them from the prices so fixed; by establishing a uniform rule for the giving of credits to dealers throughout the said States and Territories and District of Columbia and foreign countries, and for the conduct of the business of such dealers, with penalties as between the said defendants for violations thereof; by notifying each other of the delinquencies of the said dealers and keeping what is commonly known

as a "black list" of such delinquents and refusing to sell such meats to any of such delinquents; which said supposed combination and conspiracy is there alleged to be one in restraint and monopoly of commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph eighth does not allege any acts or facts sufficient to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said eighth paragraph does not allege any contract, combination or conspiracy on the part of the
74 respective defendants in restraint of interstate or foreign trade or commerce, within the meaning of said act; and does not allege any monopolizing or attempt to monopolize, or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said eighth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

17. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the ninth paragraph thereof and as alleges that the said defendants have engaged in and intend to continue an unlawful combination and conspiracy to direct and require their respective agents at and near many of the markets for such fresh meats throughout the said several States and Territories and the District of Columbia to arbitrarily make and impose uniform charges for cartage for the delivery, upon making sales to dealers and consumers in those markets, of the meats shipped to them through the said agents by the said defendants respectively, from their said several points of preparation of the same, when no such charges have been or are customary in such trade and commerce, or would be made but for said supposed combination and conspiracy, thereby increasing the charges for such meats to said dealers and consumers in such markets, and preventing the
75 purchase of the same by those who are unable or unwilling to pay more than the price of the meats themselves without such additional charge; which said supposed combination is there alleged to be in restraint of said trade and commerce aforesaid.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph ninth does not allege any acts or facts sufficient to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful

restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said ninth paragraph does not allege any contract, combination or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce, within the meaning of said act; or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said ninth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

76 18. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the tenth paragraph thereof and as alleges that the schedule of rates, fares and charges for the transportation of live stock to the places of its conversion into meats as alleged in said bill or petition, which have been established and published by the common carriers by railroad, subject to the provisions of the laws of the United States for the regulation of commerce, were and are and will be the only lawful rates for the transportation, as aforesaid, of such articles, and that the defendants intending thereby to monopolize and attempt to monopolize the commerce aforesaid and prevent competition therein, have all and each engaged in and will continue arrangements and agreements with divers officers and agents of such common carriers, whereby said defendants were to receive and have received and will continue to receive, by means of rebates and other devices, unlawful rates for such transportation much less than the said lawful rates, and were to exclusively enjoy and share such unlawful advantage, to the exclusion of competitors and would-be competitors and the general public, and have accordingly so enjoyed and shared them, and will, unless restrained by the court, continue to do so; and by force of the consequent inability of competitors and would-be competitors to engage or continue in such commerce without ruinous loss, have monopolized and are monopolizing and will continue to monopolize the said commerce, and have attempted and are attempting and will attempt to monopolize such com-

77 merce in live stock and fresh meats among the States and Territories and the District of Columbia and with foreign countries; which supposed scheme to monopolize it is there alleged is also a combination and conspiracy in restraint of trade and commerce among the States and Territories and the District of Columbia and with foreign countries.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph tenth does not allege any acts or facts sufficient to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints

and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said tenth paragraph does not allege any contract, combination or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce, within the meaning of said act; or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said tenth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

And the circuit court erred in not holding and ruling that the supposed acts alleged in said tenth paragraph, as therein alleged,
78 are not each the acts of all of the said defendants; but they are, respectively, alleged acts of one or more of the defendants acting separately in making each for itself or himself the alleged arrangements and agreements with common carriers there referred to; and that the said tenth clause and the bill in those allegations is multifarious, and that there is a misjoinder therein of the alleged causes of action of the parties defendant in that behalf. And the circuit court erred in not holding and ruling that the supposed acts of the respective defendants in said tenth clause alleged are not forbidden by the act in question or by any other law, and that either or any of the defendants, acting separately with respect to his or its own business, is not, and within the sanction of the Federal Constitution could not be forbidden from agreeing for or receiving the rates of transportation referred to in said tenth clause of said bill.

19. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the eleventh paragraph thereof and as alleges that the said defendants now are and for years past have been in combination and conspiracy with each other and with the railroad companies and others to obtain a monopoly of the supply and distribution of fresh meats throughout the United States and its Territories and shipments thereof to foreign countries.

And the said defendants and appellants respectively say that the circuit court erred in not holding and ruling that the said paragraph eleventh does not allege any acts or facts sufficient
79 to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said eleventh paragraph does not allege any contract, combination or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce, within the meaning of said act; or any combination or conspiracy to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed

contracts or acts alleged and complained of in said eleventh paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

20. The said circuit court erred in rendering and entering its decree in favor of the said complainant and in awarding or issuing any injunction thereon against the said respective defendants, and in decreeing and ordering that the injunction therein mentioned should be made permanent.

21. The circuit court erred in not holding and decreeing in favor of the said respective defendants and in not dismissing said
80 bill or petition.

Wherefore, the said respective defendants and appellants pray that the said decree of the circuit court of the United States for the northern district of Illinois may be reversed, etc.

JOHN S. MILLER,
Counsel for said Defendants and Appellants.

(Endorsed:) Filed July 18, 1903. Marshall E. Sampsell, clerk.

81 And on to-wit: the 18th day of July, in the July term of said court, 1903, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

Order of July 18, 1903, *Allowing Appeal.*

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Copartners as Nelson Morris, and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of the State of New York. } No. 26291.

On hearing and filing of petition of Swift and Company, The Cudahy Packing Company, The Hammond Packing Company and

Armour and Company, corporations under the laws of Illinois, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations under the laws of New Jersey, Michigan and New York, respectively, Nelson Morris, Edward Morris and Ira N. Morris, copartners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick
82 Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder and Henry Veeder, citizens of Illinois, Edward C. Swift, a citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, citizens of the State of New York, defendants herein, for an order allowing an appeal, and the assignment of errors herein made and filed by the said defendants with said petition for appeal,—on motion of John S. Miller, Esq., of counsel for said defendants and appellants, it is ordered that an appeal to the Supreme Court of the United States from the final decree heretofore made and entered and filed herein on the twenty-sixth day of May, 1903, be, and the same is hereby, allowed, and that a certified transcript of the record in this cause and all proceedinge herein, including the said final decree, be forthwith transmitted to the said Supreme Court of the United States.

It is further ordered that the amount of the security on appeal herein to be furnished by the said defendants be and the same is hereby fixed at the sum of five hundred dollars, and that the appeal bond of said appellants with Charles W. Armour and Charles S. Pitkin as sureties, here now presented, be and the same is approved and filed.

83 And on the same day to-wit: the 18th day of July, 1903, there was filed in the clerk's office of said court in said entitled cause a certain bond on appeal in words and figures following to-wit:

84 *Bond on Appeal.*

Know all men by these presents, that we, Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, and Armour and Company, corporations under the laws of Illinois, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations under the laws of New Jersey, Michigan and New York respectively, Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H.

Veeder, and Henry Veeder, citizens of Illinois, Edward C. Swift, a citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, citizens of the State of New York, as principals, and Charles W. Armour and Charles S. Pitkin as sureties, are held and firmly bound unto the United States of America in the full and just sum of five hundred ($500.) dollars, to be paid to the said The United States of America, to which payment, well and truly to be made, we bind ourselves and our respective successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this seventeenth day of
85 June in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a session of the circuit court of the United States for the northern district of Illinois, in the northern division thereof, in a suit pending in said court between The United States of America, complainant, and Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Nelson Morris, Edward Morris and Ira N. Morris, co-partners under the name of Nelson Morris and Company, *et al.*, defendants, general number 26,291 in said court, a decree was rendered against the said Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations, and Nelson Morris, Edward Morris and Ira N. Morris, co-partners under the name of Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Connors, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, and the said Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild
85½ and Sulzberger Company, corporations, and Nelson Morris, Edward Morris and Ira N. Morris, co-partners under the name of Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Connors, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse the decree of the aforesaid suit, and a citation directed to the United States of America is about to be issued

citing and admonishing the United States of America to be and appear at and before the Supreme Court of the United States aforesaid.

Now the condition of the above obligation is such that if the said Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations, and Nelson Morris, Edward Morris and Ira N. Morris, co-partners under the name of Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Connors, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert
86 F. Brochert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Plaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

SWIFT AND COMPANY,
By L. F. SWIFT, *President.*

Attest:

[Corporate Seal.]

D. E. HARTWELL, *Secretary.*

THE CUDAHY PACKING COMPANY,
By MICHAEL CUDAHY, *President.*

Attest:

[Corporate Seal.]

A. F. BORCHERDT, *Secretary.*

87 THE HAMMOND PACKING COMPANY,
By J. P. LYMAN, *President.*

Attest:

[Corporate Seal.]

J. D. STANDISH, *Secretary.*

ARMOUR AND COMPANY,
By J. OGDEN ARMOUR, *President.*

Attest:

[Corporate Seal.]

C. F. LANGDON, *Secretary.*

THE G. H. HAMMOND COMPANY,
By J. P. LYMAN, *President.*

Attest:

[Corporate Seal.]

J. D. STANDISH, *Secretary.*

SCHWARTZCHILD AND SULZBERGER COMPANY,
By FERDINAND SULZBERGER, *President.*

Attest:

[Corporate Seal.]

"SAMUEL WEIL," *Secretary.*

ARMOUR PACKING COMPANY,
By CHARLES W. ARMOUR, *President.*

Attest:

[Corporate Seal.]

CHARLES S. PITKIN, *Secretary.*

88

NELSON MORRIS,	[SEAL.]
EDWARD MORRIS,	[SEAL.]
IRA N. MORRIS,	[SEAL.]
Co-partners as Nelson Morris & Company.	[SEAL.]
J. OGDEN ARMOUR.	[SEAL.]
CHARLES F. LANGDON.	[SEAL.]
JESSE P. LYMAN.	[SEAL.]
CALVIN M. FAVORITE.	[SEAL.]
ARTHUR MEEKER.	[SEAL.]
PATRICK A. VALENTINE.	[SEAL.]
MICHAEL CUDAHY.	[SEAL.]
ALBERT H. VEEDER.	[SEAL.]
HENRY VEEDER.	[SEAL.]
D. EDWIN HARTWELL.	[SEAL.]
ALBERT F. BORCHERT.	[SEAL.]
EDWARD C. SWIFT.	[SEAL.]
L. F. SWIFT.	[SEAL.]
W. H. NOYES.	[SEAL.]
WILLIAM RUSSELL.	[SEAL.]
FERDINAND SULZBERGER.	[SEAL.]
CHARLES W. ARMOUR.	[SEAL.]
CHARLES S. PITKIN.	[SEAL.]
LAWRENCE A. CARTON.	[SEAL.]
THOMAS J. CONNERS.	[SEAL.]
F. E. VOGEL.	[SEAL.]
LOUIS PFAELZER.	[SEAL.]
EDWARD A. CUDAHY.	[SEAL.]
PATRICK CUDAHY.	[SEAL.]

[Endorsed:] U. S. *vs.* Swift *et al.* Copies Appeal bond.

89 This bond approved as to form, amount and sufficiency of sureties.

P. S. GROSSCUP,
Circuit Judge.

(Endorsed:) Filed July 18, 1903 Marshall E. Sampsell clerk.

90 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, Marshall E. Sampsell, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of proceedings had in said court and made in accordance with præcipe filed in said court in the cause entitled The United States of America *vs.* Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, and Armour and Company, corporations under the laws of Illinois, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations under the laws of New Jersey, Michigan and New York, respectively, Nelson Morris, Edward Morris and Ira N. Morris, copartners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder and Henry Veeder, citizens of Illinois, Edward C. Swift, a citizen of Massachusetts and Ferdinand Sulzberger and W. H. Noyes, citizens of the State of New York, as the same appear from the original records and files of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago, in said district, this 12th day of August, 1903.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

91 UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a petition for appeal, filed in the clerk's office of the circuit court of the United States, northern district of Illinois, northern division, and order of said court allowing said appeal in cause No. 26,291 therein, wherein Swift and Company and others were defendants and are appellants as aforesaid, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Peter S. Grosscup, circuit judge, this eighteenth day of July, in the year of our Lord one thousand nine hundred and three.

P. S. GROSSCUP, *Judge.*

Due service of the foregoing citation this 18th day of July 1903 is admitted.

S. H. BETHEA,
U. S. District Attorney for the United States.

[Endorsed:] No. 26291 Supreme Court of the United States United States *vs.* Swift and Company *et al.* Citation To the Supreme Court of the United States Circuit court of the United States, northern district of Illinois, northern division. Filed Jul- 20 1903 Marshall E. Sampsell, clerk.

Endorsed on cover: File No. 19,046. N. Illinois C. C. U. S. Term No. 103. Swift and Company *et al.*, appellants, *vs.* The United States. Filed August 14, 1903. File No. 19,046.